REMARKS

Claims 18-21 currently are pending in this application. No new matter has been added. Reconsideration is respectfully requested in view of the above amendments and the following remarks.

Applicants' Response to §103 Rejection over Hager in view of McDonald and LMC International and further in view of Knebl

Claims 18-21 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 4,975,288 to Hager et al. (hereinafter "Hager") in view of U.S. Patent No. 3,062,662 to McDonald (hereinafter "McDonald") and "LMC International Unveils Market's fastest ball lollipop machine" (hereinafter "LMC International") and further in view of U.S. Patent No. 4,938,128 to Knebl (hereinafter "Knebl"). Applicants respectfully request reconsideration on the basis that the cited combination fails to suggest Applicants' claims, as amended herein.

The Examiner contends that Hager discloses extruding chewing gum material from an extruder, batch forming chewing gum pieces and pouring or injecting a center-fill fluid into the interior of the chewing gum pieces. According to the Examiner, it would have been obvious to one skilled in the art to:

> coat the center-filled gum in Hager et al with a molten candy material and insert a stick therein since it is well known to coat bubble gum with such a candy coating and insert a stick therein in the preparation of candy suckers in order to provide the suckers with an attractive form and appearance and with a means to hold the suckers, as evidenced by McDonald. Further, it would have been obvious to form the suckers into the shape of a ball since it is old to prepare lollipops, each having the shape of a ball, as evidenced by "LMC International".
>
> (Office Action of June 15, 2006, at Page 3).

The Examiner further asserts that:

> it would have been obvious to apply the coating in Hager, as modified by McDonald, by using rotating rollers since it is well known to coat a confectionery rope with a candy outer layer by using rotating rollers, as evidenced by Knebl.
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> (Office Action of 11/20/2006, at page 2).

Applicants have amended claim 18 herein to further define the claimed invention. The extruding step has been further defined to require extrusion of "a rope of gum material from an extruder into a tubular member." The transporting step has been further defined to require the extruded rope be transported "through said tubular member into a batch forming mechanism." The injecting step has been further defined to require the center-fill semi-liquid material to be injected "into said rope of gum material." The candy coating step has been amended to require the continuous molding of "molten candy material around said tubular member and said gum material in said batch forming mechanism thereby forming a rope of candy coated center-filled gum material". The forming step has been amended to require "forming individual lollipop balls from candy coated center-filled gum material in the lollipop forming mechanism". In addition, another step has been added to require "transporting said rope of candy coated center-filled gum material to a lollipop forming mechanism". This amendment is supported by disclosure on pages 5, 6 and 9 of Applicants' specification. No new matter has been added.

M.P.E.P §2143 states the "Basic Requirements of a *Prima Facie* Case of Obviousness. In order to establish a *prima facie* case of obviousness, (1) a reference or combination of references must provide some suggestion or motivation to modify the reference or to combine the teachings; (2) there must be a reasonable expectation of success; and (3) there must be a teaching or suggestions of all claim limitations. The teachings must consider the reference as a whole and the proposed modification cannot render the prior art unsatisfactory for its intended purpose.

Given the numerous references that are combined by the Examiner, the Appellants first point out what each of the references teaches and then point out the reasons why the combination fails to provide a *prima facie* case of obviousness under Section 103.

The combination of Hager, McDonald, LMC International and Knebl fails to establish a *prima facie* case of obviousness because (1) there is no motivation to combine the references, (2) there is no reasonable expectation of success and (3) there is not a teaching or suggestion of all claim limitations.

Important aspects of the requirements for motivation to combine and expectation of success are that both must come from the prior art and not from the disclosure of the present invention. According to MPEP §2143, "[t]he teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure."

Nowhere in Hager, McDonald, LMC International or Knebl are such steps of extruding a rope of gum material into a tubular member, injecting center-fill semi-liquid material into the rope of gum material and continuously molding molten candy material around the tubular member and gum material to form a candy coated center-filled gum material which are formed into three-material lollipops disclosed, taught or suggested.

Hager discloses a method for preparing a center-filled chewing gum which provides an advantage over prior methods of preparing center-filled gums in that the gum pieces may include 35-40% by weight center-fill. This reference is directed to teaching a superior method of preparing center-filled chewing gum since prior methods could only achieve 12-17% by weight center-fill. However, Hager fails to contain any disclosure or suggestion of candy coating its center-filled gum material. Moreover, nowhere in Hager is any suggestion to continuously molding candy around its center-filled gum and then placing a lollipop stick therein. As such, Hager focuses on the advantages of its method for preparing a center-filled chewing gum and

provides no motivation or suggestion to create a three-material lollipop as described in the present claims.

McDonald discloses a combination bubble gum and candy sucker. The process disclosed involves heating candy material until it is a hot syrup. The individual chewing gum pieces, which each include a stick, are dipped into the hot syrup once or twice to obtain the desired amount of candy thereon. (McDonald; Col. 2, lines 14-23 and 37-39). Although the Examiner asserts that it would have been obvious to candy coat the center-fill gum of Hager in view of McDonald, McDonald is completely devoid of any disclosure relating to the candy coating process recited in Applicants' claims. McDonald merely discloses dip coating individual pieces of chewing gum, which is not a continuous process. Nowhere in McDonald is there any suggestion to continuously mold molten candy around a tubular member and gum material as disclosed in Applicants' claims.

In contrast, Applicants' claimed process requires continuously molding molten candy material around an extruded center-filled gum material, which is typically referred to as a "rope". The molten candy material is molded around the tubular member and extruded gum material. In particular, rotating rollers form the candy material into a cone-shaped plastic mass around the tubular member and gum material as it proceeds through the batch forming mechanism. Individual lollipop balls are subsequently formed from the three-phase material, i.e., candy coated, center-filled gum material.

McDonald fails to contain any disclosure or suggestion of such a process for molding candy material around an extruded gum material and subsequently forming lollipop balls therefrom. Moreover, there is no suggestion in McDonald to modify its teachings to continuously mold the candy material around the gum. McDonald merely relates to coating individual, pre-formed chewing gum pieces, which involves entirely different processing concerns from the present invention. One skilled in the art would have no motivation to combine Hager with this reference to develop the three-material lollipop of the present invention.

LMC International was merely cited for its disclosure of lollipops in the form of balls and fails to provide any disclosure of relevance to a process for continuously molding candy around chewing gum material. Furthermore, LMC International fails to even suggest using chewing gum or center-filled chewing gum. Neither Hager nor McDonald suggests a candy coated center-filled gum of the present invention, let alone a three material lollipop. One skilled in the art would have no reason to look to combine Hager and McDonald with this reference to develop the three-material lollipop as described above. Hence, LMC International fails to cure the deficiencies of Hager and McDonald in this regard.

Knebl was merely cited for its disclosure of using rotating rollers to coat a confectionery rope. Nowhere in Knebl are molten candy materials which are continuously molded around a tubular member and an extruded rope of gum material disclosed, taught or suggested. Knebl describes a center-filled confectionery rope with a candy center. However, the center candy in Knebl is too viscous and cannot be pumped. Thus it is necessary to helically wrap the exterior candy around the center candy. (Knebl, abstract). As such, one skilled in the art would not look to Knebl for forming candy around an *extruded* gum material.

Furthermore, Knebl describes a wholly different process for combining the outer candy to the inner candy than the process described in the present invention. Knebl discloses that "[t]he exterior candy is wrapped around the center candy in a helical fashion; that is, the exterior candy is 'coiled' around the center candy as the center candy advances along the length of the batch roller." (Knebl, col. 10, ll. 14-17). The outer candy is directly wrapped around the center candy with the assistance of gravity. (Knebl, col. 9, ll. 21-23). The present invention forms the candy around an extruded rope of gum which is transported through a tubular member. The mass of candy is "shaped into a continuous length of rope" around the tubular member and extruded gum member. (Instant Specification at page 9) The three-material lollipop is formed after the gum material is discharged from the tubular member. Nowhere in Knebl is such a process disclosed,

taught or suggested. As such, Knebl clearly fails to cure the deficiencies of Hager, McDonald and LMC International.

It should further be noted that Applicants have more clearly defined the candy coating step to require the continuous molding of the candy material around the tubular member and gum material. Hager does not suggest or disclose coating a center-filled gum. McDonald was merely discloses dip coating a piece of chewing gum. Nowhere in McDonald is continuously molding candy materials around a center-filled gum disclosed, taught or suggested. LMC was merely cited for the formation of lollipops. Knebl, as discussed in detail above, relates to an entirely different process than that described in the present invention. Any rejection based on the motivation to combine these references is impermissible hindsight reconstruction. Such motivation must come from the prior art itself, and not from the Applicants' disclosure. The cited references contain no disclosure, teaching or suggestion of continuously molding candy material around a center-filled gum material. As such, it is respectfully submitted that this amendment provides an additional ground of patentability.

For the reasons set forth above, there is no motivation in any of the references to combine the teachings of each. Furthermore, the references do not teach all the steps required by the present invention. Thus, any combination of the cited references would subsequently lack these required steps. Even if combined, the references would neither lead one of ordinary skill in the art to prepare the invention of the present claims nor could you reach the invention of the present claims.

In view of the above, the combination of Hagar, McDonald and LMC International fails to disclose or suggest Applicants' claim 18, as amended herein. Applicants respectfully submit that amended claim 18, and thus claims 19-21 which depend therefrom, are patentable over Hagar, McDonald, LMC International and Knebl, each taken alone or in combination and are in proper form for allowance. Reconsideration and withdrawal of the Section 103 rejection is respectfully requested.

Applicants submit that the claims are patentable over the prior art and in proper form for allowance. Favorable action is respectfully requested.

No fees are believed to be due with this amendment. However, the Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

Respectfully submitted,

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